

Report to COUNCIL

Constitutional Amendments

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Reason for Decision

A refresh of the Council Constitution has been undertaken with two principal objectives in mind. Firstly, to ensure that all legislative and procedural references are current and up to date, including cross referencing from descriptive content to more detailed procedures and, secondly, to look to simplify content so far as is possible in what will always be a complex procedural document in order to aid both understanding and application to practical circumstances.

The Constitution has been impacted upon by the Local Authorities and Police and Crime Panel (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 which has introduced certain mandatory provisions for the period to 7th May 2021. While these mandatory provisions are time limited, it is considered good practice to incorporate them into the Council's Constitution at this time to properly present the Council's statutory and procedural requirements under the Regulations.

The Planning Scheme of Delegation should be reviewed on a regular basis to ensure that it is up to date and reflects current practices and policies. Planning Committee procedures have been under scrutiny recently due to a number of issues and it is timely to review practices and procedures. The current system will benefit from updating, simplification and revision to delegated powers and protocols.

At the Cabinet meeting held on 27th January 2020 a suite of reports and recommendations relating to 'Creating a Better Place' as the comprehensive vision and strategic framework for the Borough were approved. These included proposed amendments to the Executive arrangements, including delegation arrangements, contained within the Land and Protocol which is included at Part 5(e) of the Council's Constitution. The approval of the Full Council is therefore required to agree the revision of the Council Constitution.

Recommendations

1. That Council agree the suggested amendments to Part 3 (Responsibility for Functions), Part 4E (Overview and Scrutiny Procedure Rules) and Part 4H (Employment Procedure Rules) as detailed at Appendices 1, 4 and 5 to this report as part of the refresh of the Council's Constitution and the review of Planning Committee and Delegations, subject to the date of the implementation of the revised Overview and Scrutiny Committee arrangements being agreed at a future meeting of the Council.
2. That Council agree the suggested amendments to Part 4A (Council Procedure Rules) and Part 4B (Access to Information Procedure Rules) as detailed at Appendices 2 and 3 to this report in compliance with the statutory provisions of the Local Authorities and Police and Crime Panel (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 and to ensure alignment with the agreed amendments to Parts 3, 4E and 4H of the Council's Constitution.
3. That Council agree to the inclusion of the suggested amendments to Part 5(e) (Land and Property Protocols) into the Council's Constitution as detailed at Appendix 6 to this report.
4. The Council agree the suggested amendments to Part 8 (Appendices) Appendix 3 (Protocols) as detailed at Appendix 7 to this report in respect of procedures relating to the consideration of planning applications as part of the review of Planning Committee and related procedures.
5. That any consequential amendments arising from the amendments to the Council's Constitution as presented in this report be delegated to the Director of Legal.

Constitutional Amendments

1 Background

- 1.1 Given the original Council Constitution was derived from guidance and a draft without practical experience of the current governance style, together with the subsequent piecemeal development of the Constitution in response to legislative and procedural developments, the Constitution may not be presented to best effect. While a full narrative flow that would aid understanding is perhaps not attainable, not least given the complexity of certain procedures and the reliance on the Constitution in law, efforts have been taken to simplify presentation and, where possible, to make the content more focused. The first phase of this exercise, covering Parts 1, 2 and 4A-D, together with a related consideration of Part 4F, was considered by Council in January 2020. The outcome of the review of Parts 3, 4E and 4H of the Constitution are now presented to this meeting of the Council.
- 1.2 In response to the COVID-19 pandemic and the government's requirements and advice relating to lockdown and social distancing, the Local Authorities and Police and Crime Panel (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 (the "2020 Regulations") came into force on 4th April 2020. These Regulations contained certain mandatory provisions, including those related to the convening and holding of virtual meetings and to the publication and availability of related papers, notices etc. The impact of the 2020 Regulations fall into Parts 4A and 4B of the Constitution and these are presented to this meeting of the Council.
- 1.3 The Planning Service and Planning Committee have been under increasing pressure as a result of changes to regulations, increasingly challenging targets for decision making, increasingly varied or complex material considerations and greater levels of public interest and challenge in decision making. The Planning Scheme of Delegation should be reviewed on a regular basis to ensure that it is up to date and reflects current practices and policies. Planning Committee procedures have been under scrutiny recently due to a number of issues and it is timely to review practices and procedures. The current system will benefit from updating, simplification and revision to delegated powers and protocols, and proposals impacting on Part 3 (with regard to Planning Committee terms of reference and Officer delegations) and Part 8 (with regard to procedures related to the consideration of planning applications) of the Constitution are presented to this meeting of the Council.
- 1.4 Within the Council's Constitution, the Land and Property Protocols provide guidance in respect of a range of property related matters including general management principles, the disposal of assets at best consideration as well as at an "undervalue", and a scheme of delegation for Senior Officers to approve transactions within a variety of thresholds based on capital and rental values. The Protocols have been subject to review over the last twelve months to align them with market conditions and the Council's current policies and strategies and to assist Officers in driving the Medium-Term Property Strategy (MTPS) 2020-2025 forward by streamlining the Council's governance and decision-making processes. The revised Protocols are presented to Council for inclusion at Part 5(e) of the Council's Constitution.

2 General Review of the Council Constitution

- 2.1 It should be stressed that the Constitution review has been a 'refresh' exercise, focused on updating and refining content rather than revising procedural arrangements. However, while content might have been redrafted or relocated and in general there should be

nothing 'new' in terms of procedural arrangements, circumstances have driven a more detailed consideration of employment related decision making and overview and scrutiny arrangements. Where potentially contradictory content has been found, this has been considered against the law, current procedural arrangements and a consideration of the intent of the Constitution. Efforts have also been made to enhance cross referencing to aid use of the Constitution in practical circumstances.

2.2 To avoid repetition below, several themes/circumstances have been addressed in various Parts of this Constitution refresh –

- procedural arrangements for the executive and the Council are now better aligned than were suggested by the 2000 Act guidance and the initial draft Constitution. As a result, some previously separate content has now been consolidated;
- current content refers to 'the Cabinet' when sometimes meaning 'the executive' in its wider sense. This reflected the early implementation of the Local Government Act 2000 which saw the Cabinet as the only form of the executive. The subsequent establishment of Cabinet Committees and delegation to individual Members means the use of the term 'Cabinet' is inappropriate when talking about the wider executive; and
- the subsequent statutory establishment of the 'strong leader' model meant that certain former Council functions passed to the Leader of the Council and the review has picked up and redrafted a number of consequential amendments.

2.3 Outside of the above, key points that Council is asked to consider in respect of the review exercise and the 2020 regulations are as follows -

Part 3 - Responsibility for Functions

This Part of the Constitution sets out who is responsible for which function. The effect of the Local Government Act 2000 in establishing a 'Council' branch and an 'executive' branch to the Council's functions and decision making arrangements does not necessarily make for a simple presentation of this Part, but effort has been made to present a clear distinction between 'Council' and 'Executive' functions. Beyond this, when introducing terms of reference and delegation schemes, efforts have been made to present these in consistent manner to aid understanding.

Beyond the above, principal areas addressed in this Part are -

- Section 4 - Council Committees and Terms of Reference -
 - Licensing Committee terms of reference are presented in terms of what the Committee has actually been responsible over recent years as a result of delegations made by the Committee and formalises related delegations to Officers as Council delegations;
 - Employment Committee, Appointments Committee, Investigation and Disciplinary Committee – the Constitutional Working Group has agreed in principle to the establishment of these Committees and detailed terms of reference will be submitted to a future meeting of the Council;
- Section 5 – Overview and Scrutiny Committees - revisions to the terms of reference, and some changes of names, to the Council's three Overview and Scrutiny Committees are proposed and the Council will be asked at a future meeting to confirm the date of implementation of these proposals;
- Section 7 – The Cabinet and Cabinet Sub-Committees and Boards – more specific terms of reference for the Cabinet have been produced, and the terms of reference for the established Cabinet Sub-Committees and Boards are now included.

Part 4E – Overview and Scrutiny Procedure Rules

Amendment to this Part is largely concerned with consolidating content and re-ordering provisions. While the proposals were drafted with the review of overview and scrutiny

arrangements in mind, the proposed Procedure Rules are still applicable to the existing scrutiny arrangements. The principal areas addressed are -

- Work programming and the production of an annual report are now formally recognised;
- The circumstances in which an Overview and Scrutiny Committee can report to Council and the related procedures that apply are clarified; and
- Provision is made for overview and scrutiny to be notified of circumstances when exemption from call-in is agreed by any executive decision maker.

Part 4H – Employment Procedure Rules

Amendment to this Part is largely concerned with consolidating content and re-ordering provisions, particularly around arrangements for the appointment and dismissal of staff.

- 2.4 Taken as a whole, the proposed amendments to the above parts of the Constitution may appear extensive. However, some of the proposed revisions are relatively minor, for example re-ordering content to aid accessibility and understanding. Where more detailed amendments are proposed, it is important that the Constitution reflects both current legislative requirements and procedural practice. The proposals contained within the report will entail consequential amendments to other Parts of the Constitution which are under current consideration. These amendments are related to cross referencing and presentational issues with no impact on the purpose or intent of the Council’s Constitution.

3 Local Authorities and Police and Crime Panel (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020

- 3.1 Proposals to incorporate the mandatory requirements of the 2020 Regulations have been drafted in accordance with advice issued by the Association of Democratic Services Officers (ADSO) and Lawyers in Local Government (LLG). Proposals have also been drafted with regard to certain provisions in the Constitution that rely on a physical attendance (such as standing to speak at Council, signatures etc).
- 3.2 Key points that Council is asked to note in respect of 2020 Regulations are as follows -

Part 4A – Council Procedure Rules

- The removal of the need to convene an Annual Meeting of the Council prior to 7th May 2021;
- Where documents are required to be open to inspection or otherwise available at the offices of the Council, this includes on the Council’s website;
- Provisions to allow ‘virtual’ meetings, including defining what ‘open to the public’ means in this context and implications of remote attendance for Members and the public;
- Voting, including an alternative to show of hands.
- A further paragraph is added to the scope of questions section to specify that full Council would not be the appropriate forum for conduct questions.

Part 4B – Access to Information Procedure Rules

- Where documents are required to be open to inspection or otherwise available at the offices of the Council, this includes on the Council’s website;
- Provisions to allow ‘virtual’ meetings, including defining what ‘open to the public’ means in this context.

4 Planning Committee, Delegation and Procedures

- 4.1 There have been recent challenging and difficult Committee meetings that have resulted in an examination of procedures to ensure they are up to date and effective. Observation of Committee meetings has revealed that the time spent in debating and considering applications can sometimes be excessive and can result in speakers disagreeing and debating with Officers or Members and who then appear to become involved in the Committee consideration. Observations also revealed that certain protocols are out of date and should be either deleted or updated.
- 4.2 Referral of applications by Ward Members includes no checks and balances and provides for an automatic right of referral. Planning decisions can only be made by the consideration of planning issues but there is no requirement for planning reasons to be given to support a referral request being accepted as valid. This means there is no provision for a referral to be declined because there is no planning reason for it. This creates a scenario where Planning Committee could be considering an application because of non-planning reasons and potentially making a flawed decision. Changes to the Referral Protocol are suggested to ensure that consideration is based on planning issues and that referrals are justifiable in the interest of transparency and accountability. Although the administration of the requests will be by an officer, there would be member oversight by the Chair of Committee.
- 4.3 Public participation at Committee is a valuable component of the process but can result in disturbance to the meeting by the debate dissolving into a series of exchanges between the Committee and the speaker. This is particularly the case when Ward Members are speaking. In addition, there is no time limit to the speaking time of Ward Members and whilst most appreciate that the committee's time is precious, some speak for lengthy periods. This can include quizzing Officers and Members about the applications being debated. Public speakers, including Ward Members, should simply provide information to the Committee on planning matters for the Members to take into account. If they disagree with an officer's or consultees' recommendation they can say so, but the meeting should not be allowed to descend into an argument or debate. Accordingly, a time limit for Ward Members is proposed, but one that exceeds the time limits imposed on any other speaker in recognition of their role as local representative.
- 4.4 The Planning Committee should focus on dealing with the more complex and sensitive applications rather than becoming embroiled with applications that are more straightforward, policy compliant or involve only local issues. The Officers should be given increased delegated powers to support the Committee by dealing with the more straightforward applications. The amendments to the Planning Scheme of delegation as presented are in the interests of clarification and simplification, updating terminology and references to postholders as well as enabling limited additional scope to officer's delegated powers that will help to reduce the number of applications that have to be reported to Planning Committee thereby enabling the Committee to focus upon the most complex and sensitive applications rather than dealing with more straightforward or policy compliant proposals.
(Helen Lockwood, Deputy Chief Executive/Sean Hannaby, Interim Head of Planning)

5 Land and Property Protocol

- 5.1 At the meeting of the Cabinet held on 27th January 2020 a suite of reports and recommendations relating to 'Creating a Better Place' as the comprehensive vision and strategic framework for the Borough were approved. This approval included proposed amendments to the Executive arrangements, including delegation arrangements, contained within the Land and Protocol which is included at Part 5 of the Council's

Constitution. The approval of the Full Council is therefore required to agree the revision of the Council Constitution.

5.2 The proposed main changes within the Land and Property Protocol are -

Corporate Property Board

The establishment of a joint Member/Officer Board which, for the purposes of consistency and oversight, will consider all acquisitions irrespective of capital value for approval or recommendation, with clear delegation limits established for Officer and Cabinet decision making in respect of all acquisitions, including property purchases and alternative investments, including arrangements in emergency situations. While Cabinet remains the principal decision making body, delegated authority will allow Officers to progress the acquisition of investment assets as part of the Council's Commercial Property Investment Strategy thereby assisting in the delivery of the Medium Term Property Strategy (MTPS); ensure that good investments are not lost through delays in the decision-making process; and permit the securing of additional specialist external advisors as considered appropriate when funded from existing budget allocations.

Office Moves

To ensure the Council uses its' office accommodation in a much more efficient and cost-effective manner in order to contribute to the revenue savings target highlighted within the MTPS it is imperative that Corporate Landlord has full control and oversight in coordinating and monitoring office moves across the Council's portfolio. All Service Managers are therefore to adhere to the Land and Property Protocols and all requests for accommodation or office moves need to be referred to Corporate Landlord for written approval prior to any moves taking place, such requests to include a business case providing an explanation of the rationale for the proposed move as well as confirmation of budget resource to fund any moves. Due to the significant long-term investment involved, expressed written approval from the Director of Economy is required before considering the installation of IT Hubs in Council property.

Guidance

Improved guidance is provided in respect of

- **Protocol on Disposal of Open Space**

The Protocol now includes a Public Open Space Assessment Matrix to assist Officers to determine whether land subject to a proposed sale could be deemed as "open space" as defined within Section 336(1) of the Town and Country Planning Act 1990.

- **Disposals Protocol/Method of Sale**

The Protocol now includes a summary of the various marketing methods together with a Tender Procedure and how to deal with Late Bids.

(Emma Barton, Director of Economy/Peter Wood, Head of Strategic Asset and Facilities Management)

6 Options/Alternatives

6.1 Option 1 – To agree the suggested refresh and other proposed amendments to the Council's Constitution.

Option 2 – Not to agree the suggested refresh and other proposed amendments to the Council's Constitution.

7 Preferred Option

7.1 Option 1 is the preferred option to ensure and bring coherence to previous piecemeal amendment to the Constitution, to ensure that incidental amendments and cross

references are incorporated in full to aid understanding and implementation of the Constitution, to reflect mandatory procedural requirements that the Council must adopt, and to reflect revised procedures and arrangements for the effective conduct of Council business more generally.

8 Consultation

- 8.1 The Constitutional Working Group have recommended the suggested changes arising from the general review of the Council's Constitution and the mandatory provisions of the 2020 Regulations to the Full Council. The Chairs of the Overview and Scrutiny Committees were consulted in respect of proposals related to the Overview and Scrutiny function.
- 8.2 The Portfolio Holder for Housing and the members of the Planning Committee were consulted about the proposals in respect of planning matters. Members of the Planning Committee unanimously supported all of the proposed amendments to the Scheme of Delegation apart from one member who expressed concern about the increased level of delegation to increase the number of new dwellings that can be dealt with under delegated powers from ten to 20.
- 8.3 The proposals in respect of the Land and Property Protocol were subject to wide ranging internal consultation prior to the Cabinet consideration and approval of the revisions to the Protocol.

9 Legal Services Comments

- 9.1 Legal comments are provided in the body of the report.

10 Background Papers

- 10.1 None.

11 Appendices

- 11.1 Appendix 1 – Part 3 Responsibility for Functions
Appendix 2 – Part 4A Council Procedure Rules
Appendix 3 – Part 4B Access to Information Procedure Rules
Appendix 4 – Part 4E Overview and Scrutiny Procedure Rules
Appendix 5 – Part 4H Employment Procedure Rules
Appendix 6 – Part 5(e) Land and property protocols
Appendix 7 – Part 8 Appendices Appendix 3 Protocols, insofar as the Appendix relates to procedures for the consideration of planning applications